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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/704,771 | 11/03/2000 | Michael F. Marlin | | 4378 |

7590 06/21/2005
Jonathan E Grant
2107 HOUNDS RUN PLACE
SILVER SPRING, MD 20906

EXAMINER

MILLER, BENA B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3725

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

9A

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 09/704,771 | | MARLIN, MICHAEL F. | |
| | Examiner | | Art Unit | |
| | Bena Miller | | 3725 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Bena H. Miller

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brannon (US Patent 4,830,244).

Regarding claims 22 and 27, Brannon teaches in the figures most of the elements of the claimed invention, including a helical section (26), a handle being integral with said helical section (f16,26), the handle comprising a straight section (fig.1). Regarding claim 22 and 23, Brannon fails to teach a plastic wire and the helical section's length ranging from about two and three quarters inches to about six inches and the handle length ranging from about 3 ½ inches to about 6 ½ inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the helical section's length of Brannon ranging from about two and three quarters inches to about six inches and the handle's length ranging from about 3 ½ inches to about 6 ½ inches since it known in the art to have the helical section and handle between the claimed range for the purpose of grasping the end of the handle. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to having the wire plastic, since it has been held to be within

general skill of worker in the art to select known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding claim 24, Brannon fails to teach the helical section's diameter ranging from about $\frac{1}{4}$ inch to about 1 inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the helical section's diameter ranging from about $\frac{1}{4}$ inch to about 1 inch since it is known in the art to have the helical section for the purpose of providing a different size for usage by various sized individuals.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brannon in view of Bidwell.

Brannon teaches in the figures most of the elements of the claimed invention, as noted above. However, Brannon fails to teach words printed along the length of the coils. Bidwell teaches a spring member (fig.4) having a word ("graphic") printed thereon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply printed words as taught by Bidwell in the helical section of Brannon for the purpose of providing excitement when using the toy.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brannon in view of Molenaar.

Brannon teaches in the figures most of the elements of the claimed invention, as noted above. However, Brannon fails to teach a colored coiled toy. Molenaar teaches in figures 1-7 a coil spring toy (12) having a line in a configuration of a figure 42 made of paint, ink or colored plastic material secured or applied to the toy (col. 5, par. 7). It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to apply color as taught by Molenaar to the coiled toy of Brannon for the purpose of providing interest to the person when using the toy (col. 6, lines 13-16).

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

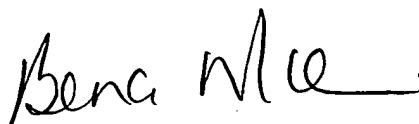
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bena Miller", with a stylized flourish at the end.

Bena Miller
Primary Examiner
Art Unit 3725

bbm
June 19, 2005